IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 32143 of 2007(B)

PETITIONER:

O.K.MUHAMMED ALI,S/O. YOUSUFF,
OSSANKUNNATH HOUSE, ACHADIPARAMBU,
WEST KODUR, P.O. KODUR,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:
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1. ESSAR TOWER INFRASTRUCTURE PVT.LTD
41/256,C-19,2ND FLOOR,
MATHER SQUARE, ERNAKULAM,KOCHI-18.

2. KODUR GRAMA PANCHAYATH,KODUR,
MALAPPURAM DISTRICT-676 504,
REP. BY ITS SECRETARY.

ADVS. SRI.SANTHOSH MATHEW --- R1
SRI.SATHISH NINAN
SRI.N.MANOJ KUMAR --- R2
SMT.JAYASREE MANOJ --- R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 32143 of 2007

Dated this the 5th day of December , 2007

JUDGMENT

This writ petition has been filed by a resident of the 2nd respondent Panchayat viz. Kodur Grama Panchayat in Malappuram District. He is aggrieved by the construction of a mobile telephone tower in a thickly populated area by the first respondent company. The petitioner seeks a writ of mandamus commanding the 2nd respondent Panchayat to consider Ext.P1 representation submitted by him and the general public of the area and to give appropriate direction to the first respondent company to shift the tower by at least 100 meters to the west of the presently proposed site. The further prayer in the writ petition is that the first respondent company be restrained from putting up the tower at the presently proposed place before Ext.P2, a mass petition signed by crores of people, is considered.

2. On entering appearance through Advocate Sri. Santhosh Mathew, the first respondent company has filed a detailed statement. It is submitted therein that the first respondent's application for permit to construct the building for instalation of the tower was

rejected by the Panchayat in the wake of complaints submitted by the residents. Against that order, the first respondent filed a writ petition before this court and this court, following the judgment of the Division Bench in **Reliance Infocomm v. Chemancherry Grama Panchayat (2006 (4) KLT 695),** set aside the rejection order and directed the Panchayat to reconsider the matter in the light of the judgment. Ext.R1(1) is a copy of the judgment in the writ petition filed by the first respondent. The Panchayat again rejected the first respondent's application. Against that rejection order, the first respondent filed C.O.C. No.894/2007 against the Secretary of the Panchayat. At that juncture, the Panchayat preferred Writ Appeal against Ext.R1(1) judgment. The writ appeal was dismissed by a Division Bench and Annexure R1 (2) is a copy of the judgment in the Writ Appeal. The petitioner preferred W.P.(C) No.19303/2007 against the order of the Panchayat rejecting the petitioner's application. This court allowed the said writ petition and quashed the Panchayat Committee's decision and the Secretary of the Panchayat was directed to reconsider the matter within three weeks. Annexure R1(3) is a copy of the judgment of this court in W.P.(C) No.19303/2007. Pursuant to Annexure R1 (3), permit was granted to the first respondent and construction work was started. Annexure R1 (4) is a copy of the

permit. At that juncture, the residents of the locality submitted a complaint to the Sub Divisional Magistrate, Perunthalmanna, which was numbered as L.Dis.8114/2007. The first respondent filed a counter affidavit before the Sub Divisional Magistrate. As per Order No. 8110/2007, the matter was closed. The first respondent had identified three possible locations in the Panchayat, which were personally inspected by the Secretary of the Panchayat and it was after a detailed consideration of the matter, that the first respondent was directed by the Panchayat Secretary to install the tower at the present location.

3. The second respondent Panchayat filed a detailed statement, wherein it is stated that one Mr.K.K.Shihab, a representative of the first respondent, had agreed in a meeting attended by the first respondent and inhabitants of the locality to consider the proposal to erect the tower in another plot i.e. 100 meters away from the presently proposed site. Ext.R2A decision of the Panchayat is relied on.

4. Sri. Salil Narayanan K.A., the learned counsel for the petitioner has addressed me extensively on the various grounds raised in the writ petition. The learned counsel invited my attention to the averments in the writ petition and the documents placed on record.

Sri. Santhosh Mathew, the learned counsel for the first respondent would meet the submissions of Sri.Salil Narayanan. Sri.N.Manoj Kumar, the learned counsel for the Panchayat would make submissions on the basis of the detailed statement dated 20th November 2007 which has been filed by the Panchayat. Sri.Santosh Mathew would take strong exception to the stand of the Panchayat that there has been an agreement to shift the tower to another site.

5. Having considered the rival submissions addressed at the bar in the backdrop of the history of the various litigations, which had to be waged/defended by the first respondent company over the installation of the mobile tower in the area of the 2nd respondent Panchayat, I am of the view that it will not be just to grant the prayers in the writ petition. It is on the ground of health hazards that the petitioner and the Panchayat are raising objections. But these are all grounds which have been considered by the Division Bench of this court in Reliance Infocom's case (supra). The judgment in Reliance Infocomm's case was rendered taking into account the views of the expert bodies like the Automic Energy Commission and the World Health Organization regarding the possibility of health hazards on account of radiation emanating from the mobile telephone tower. In the light of the judgment in Infocomm's case , it

has to be found that the grievance voiced by the petitioner are not genuine or serious to the extent of this court directing the first respondent to shift the mobile tower to yet another spot. Wherever mobile towers are installed there is likelihood of some opposition from the people living near to the tower. The question is whether opposition is ration. There is no convincing material on record to show that the first respondent company has agreed to a further shifting of the mobile tower from its proposed site. It is improbable that in the backdrop of the litigation's, the first respondent would have voluntarily agreed for such further shifting.

For all these reasons, the reliefs sought for will stand declined and the writ petition will stand dismissed.

PIUS C. KURIAKOSE,
JUDGE.

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